IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 10639 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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RAKESHBHAI GORDHANBHAI BAROT & 3 – Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR SP MAJMUDAR for Applicant(s) : 1 – 4.

MR HL JANI, APP for Respondent(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 2,
MR HRIDAY BUCH for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 28/09/2005

ORAL JUDGMENT

1. Rule. Mr.H.L.Jani, learned advocate appearing for the respondent No.1 – State waives service of rule and Mr.Hriday Buch, learned advocate appearing for the respondent No.2 / original complainant waives service of rule on behalf of respondent No.2.

2. At the request of the parties the matter is taken up for final hearing, since the matter is settled between the petitioners and the respondent No.2.

3. The present petition is filed by the petitioners – original accused praying for quashing and setting aside the criminal complaint being I-CR No.261/2005 registered at Katargam Police Station, Surat and all further proceedings relating to the said complaint.

4. Mr.S.P.Majmudar, learned advocate appearing for the petitioners has submitted that the petitioners have filed the present petition under Section 482

of the Criminal Procedure Code invoking the inherent jurisdiction vested in this Court and praying for quashing and setting aside the said illegal, frivolous and bogus complaint filed against the present petitioners under Section 406, 420, 467, 468, 471, 506(2) and 120-B of the I.P.C. It is averred in the petition that the said complaint is nothing but an abuse of process of criminal machinery and the complaint was filed only with a view to extort money from the present petitioners. Mr.Majmudar has further submitted that after the filing of the said complaint, the dispute has been settled between the complainant and the present petitioners and Settlement Deed has already been arrived at. The complainant has agreed to withdraw the said complaint. He has, therefore, submitted that this Court should exercise its inherent powers and quash the complaint especially when the dispute in question is settled between the parties.

5. This Court has issued notice on 21.9.2005 and

stayed the further investigation by directing the Investigating Agency not to take any coercive action against the petitioners. After the service of notice Mr.Hriday Buch learned advocate filed his appearance on behalf of the respondent No.2 and an affidavit is also filed by respondent No.2, wherein it is stated that the respondent No.2 has no objection if the complaint in question is quashed and set aside by this Court exercising its inherent jurisdiction under Section 482 of the Criminal Procedure Code. It is further stated in the said affidavit that the entire dispute which was of civil nature was settled and the present complaint filed by him may therefore be quashed by this Court while exercising its inherent powers under Section 482.

6. Today when the matter is called out the original complainant is present in the Court. The petitioner No.2 is also present. The complainant is identified by Mr.Buch, learned advocate appearing for him. The original documents executed

between the parties have been perused by the Court. One declaration as well as consent agreement is executed between Rakeshbhai Gordhanbhai Barot – petitioner No.1 and Ramiben Ishvarlal Chauhan. The present respondent No.2 and original complainant has also made an affidavit on 12.8.2005, wherein he has admitted that he has received the full consideration from the petitioner No.1 and settlement purshis was already presented in the Court of Principal Civil Judge (S.D.) Surat in Regular Civil Suit No.641/2005. He has also admitted in the said affidavit with regard to the execution of Agreement of Sale as well as possession receipt in favour of the petitioner No.1. He has further stated that henceforth, there is no dispute between the complainant and the petitioners. Mr.Majmudar has further submitted that Agreement of Sale as well as possession receipt are already placed on the record of this case, wherein the details of receipt of payment of Rs.59,71,000/- are given. From the said details, it appears that the complainant has received Rs.20

lacs on 10.8.2005 by account payee cheques and an amount of Rs.16,91,475/- was adjusted by stating that the same was paid to different parties by the petitioner No.1 on behalf of the respondent No.2. It is further stated that the respondent No.2 has received an amount of Rs.22,79,475/- in cash on 12.8.2005. With regard to these two entries, the Court has asked the complainant as to whether these two amounts were in fact, received and/or adjusted as stated in the agreement or the same was so stated under any kind of threat, duress or compulsion. In reply to this, the complainant has confirmed these facts and denied the use of any threat etc., against him. Mr.Buch has also submitted to the Court that he personally inquired about it from the complainant.

7. In the above view of the matter, the Court is of the view that since the settlement is arrived at between the parties and no dispute remains between them and the dispute prima facie is of civil nature, it is not just and proper to drag the

parties to criminal proceedings. The legal position is well settled in this regard and this Court as well as the Hon'ble Supreme Court have taken the view in many cases that when the dispute is of civil nature and the amicable settlement is arrived at between the parties, the Court should not normally drag the parties to face the criminal trial.

8. Following the several judicial pronouncements made on the issue of settlement even on non compoundable offences and looking to the facts and circumstances of the case and after ascertaining the fact regarding settlement between the parties from the complainant who is present before the Court and after considering the submissions made by the learned advocates on behalf of the respective parties, the Court is satisfied about the settlement and is of the view that the complaint deserves to be quashed and set aside. It is however, made clear that this should not be treated as precedent and this order would not come in the

way of any other authorities such as Income-tax Department, Stamp Duty Authority who might have initiated or may initiate any proceedings on the basis of this settlement between the parties or as a result of the said transaction.

9. In the above view of the matter, the criminal complaint being I-CR No.261/2005 registered at Katargam Police Station, Surat is hereby quashed and set aside. Rule is made absolute without any order as to costs.

kks (K. A. PUJ, J.)